IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1751 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT SD/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? NO.

JJJJJJJJJJJJJJJJJJJJJJJJJJJJ

2. To be referred to the Reporter or not? NO.

J

3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO.

5. Whether it is to be circulated to the Civil Judge? NO.

DR. UTTAMA RAJENDRAKUMAR PARIKH

Versus

STATE OF GUJARAT AND OTHERS.

Appearance:

MR TS NANAVATI for Petitioner

MR.D.N.PATEL ADDL.PUBLIC PROSECUTOR for Respondent No. 1

MR AM PAREKH for Respondent No. 2

SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 09/09/96

ORAL JUDGEMENT

JUDGMENT :-

1. The petitioner prays for cancellation of bail granted to the opponent no.2, her husband alleged to have committed the offences u/s. 498-A, 292, 500, 504, 506

and 507 I.P.Code.

2. The opponent no.2 at present serving as Medical Officer in Sir T.Hospital at Bhavnagar, married the petitioner Dr. (Smt) Uttamaben Parikh, serving as Anesthetic in L.G.Hospital, Ahmedabad. By passage of time after marriage, faith, trust, affection, love, congruity, mutual understanding, adjustment and harmony, the essence of the marital union for building up a happy home came under strains and gradually started to wither away, with the result both started to live separately, but that could not turn out to be the breather or peace to any one. As alleged by the petitioner,the opponent no.2 started to sout out venom, not at all well-based or justified. Formerly, she was serving in the K.E.M. Hospital at Balasinor. The opponent no.2 started to pester, baffle and intimidate by writing letters not only to her, but also to the members of the staff in hospital, her neighbours and to the father of the petitioner and his all relatives showering virulent and vile abuses by ribaldry. Because of continuous bombardment of nasty and obscene letters, Dr. Uttamaben thought that unnecessarily she would be underestimated by the people and it would not be possible to keep her chin up. Being ashamed, she left the job at Balasinor and settled at Ahmedabad, but the opponent no.2 adhered to his crookedness and obitinancy. He continued to malign by writing such filthy letters to her, her father, neighbours, staff members, relatives and her colleagues in rapid succession. Not only that but he used to abuse and inveigh also on phone in incivil, rude, rough and offensive language, reflecting his idiotic and perverse mentality; and defamed her and her father. The petitioner within a short time received in bulk the pesky letters. Plucking up the courage at last Dr.Uttamaben filed a complaint before Naranpura Police Station, Ahmedabad, requesting the Police to take necessary action against the opponent no.2 for the offences u/ss. 292, 504, 506(2), 500, 507 and 498-A of the I.P.Code. She also filed marriage petition for divorce. Likewise opponent no.2 also filed Hindu Marriage Petition. During the course of the investigation, the Police arrested the opponent no.2. He then on 3/2/96 came to be enlarged on bail imposing certain conditions by the learned Metropolitan Magistrate, 9th Court , Ahmedabad. After being released on bail, the opponent no.2 continued to write nasty and squalid letters and talk loosely on phone & thereby be-devil her. The petitioner has therefore filed this application for cancellation of bail granted.

3. The opponent no.2 has denied the allegations

levelled against him submitting further that the bail once granted cannot lightly be cancelled and the complainant should not be given a free hand without satisfactory proof, or unless there are strong and compelling circumstances, the bail granted should not be cancelled. Nothing can be assumed in favour of the party seeking cancellation of bail as vengeance on the part of that party cannot be ruled out.

4. Mr. Patel, the learned APP for opponent no.1 supported the petitioner. According to him, the accused if misuses the liberty granted to him by bail, he would disentitle himself to the privilege so granted.By writing pesky letters after being released on bail, the opponent no.2 had lost the privilege of being on bail. Such act is required to be frowned upon

5. Diverse views about consideration for cancellation of bail and duty of the court have been expressed by the learned advocates representing the parties. Although there may be divagation, it is necessary to deal with the same at least in brief. The object of sub-section (5) of Sec. 437 or sub-section (2) of Sec. 439 Criminal Procedure Code, is to protect the interest of administration of justice and to prevent the same being throttled in any manner, and not punitive. In case of non-bailable offence, grant of a bail is a concession allowed to the accused and it presupposes that this privilege is not to be abused in any manner. It is a sort of a trust reposed in him by the court. If it is betrayed, bail granted can be cancelled. If the bail is granted totally on irrelevant consideration, or the order granting bail is bad from the very inception, the bail can be cancelled. If the accused does not appear before court even on a single day will be a ground to cancel the bail. If the bail is obtained by practising fraud on court, it can be cancelled. If the larger interest so demands the bail can be cancelled. After being released, the accused commits the very same offence or commits any other offence, or hampers the investigation, prevents the search of the places under his control, or tampers with the evidence, or intimidates the witnesses, or removes traces or proof of a crime, or runs away abroad, or goes underground or remains beyond the control of his surety or violates direction of court or commits breach of the conditions of bail and the like, the bail can be cancelled. In short if he misuses his liberty or does an act injurious to the interest of prosecution or larger interest, the bail has to be cancelled. On any of the aforesaid grounds when cancellation of bail is sought for, the court has to exercise the powers with care and

circumspection and in appropriate cases because cancellation of bail is a harsh order and so should not be lightly issued. The Supreme Court in the case of Bhagirathsinh Judeja vs. State of Gujarat, AIR 1984 SC 372 has also made it clear that the bail granted can be cancelled only when it is found that

"Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. It is now well-settled by a catena of decisions of the Supreme Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. If there is no prima facie case there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence."

6. The party seeking the relief has to specifically alleged and should not putforth vague allegations. Hence out of the above stated grounds, the petitioner while concluding his submission confined to the only ground namely indulgence of opponent no.2 in the very same offence. According to the petitioner even after being enlarged on bail, the opponent no.2 continued to write nasty and pesky letters, and on phone gave threats to kill her and thereby he abused his liberty. No doubt on such ground the bail can be cancelled but the case alleged cannot be weighed on the basis of conjectures and inferences, or on fear, it should be tested on the touchstone of preponderance of probability appearing from the affidavit or other materials on record, because bail once granted cannot be cancelled in a mechanical manner. The materials on record have to be carefully considered. It is therefore not necessary to tender positive evidence. Further the acts and conduct of the accused after being released on bail has to be considered and not prior to it.

7. On behalf of the petitioner, three letters (xerox copies) were shown to me alleging that those letters were written subsequent to the release on bail. One letter dated NIL is handwritten, while rest two dated Nil are typewritten. On the basis of postal mark, it seems one

typewritten postcard was despatched or delivered on 14/4/1996 while another on 24/4/1996. The envelope of the handwritten letter is not produced so as to know the date of despatch or delivery. One cannot with certainty say that the said letter was written after the opponent came to be released on bail. It is not made clear on what day, the said letter came to be received. The same is therefore required to be kept out of consideration. I will however consider the same alongwith the typewritten letters. There is nothing on record to show that abovestated 3 letters are written by the opponent no.2 as neither of them is signed. Also there is nothing on record indicating that these letters were written at the instance of opponent no.2. As submitted the opponent no.2 used to write nasty and pesky letters not to the petitioner or her father alone, but to the petitioner's relatives, sisters, brothers, neighbours, colleagues and members of the staff in the hospital. The contents were therefore known to many and were not confined between the opponent no.2 and petitioner. It will not be therefore just and proper to hold that the author of these three letters is the opponent no.2 or at his instance, the third one. The contention that who else could have written; the opponent no.2 the arch-rival out to harass and satisfy his ill-will, alone could have, cannot be accepted. Further on the basis of conjectures and inferences, the court cannot accept the contention. In her affidavit below the pleadings (which can vartually be said to be the verification of the pleadings), the petitioner and in his affidavit, the father of the petitioner have shrewdly and conveniently eschewed to say specifically about the three letters. In general they have made a sweeping statement that opponent no.2 used to write pesky, ill-worded and obnoxious letters which is not sufficient. So far as handwritten letter is concerned, it is not stated in affidavit referring the same specifically that the handwritings thereof are the handwritings of the opponent no.2 and none else. They on the contrary are yet waiting for the opinion of the Handwriting Expert, the Police is to consult in connection with the complaint about the letter is lodged. As above stated three letters are not specifically referred with details to identify and nothing establishing nexus between the letter and opponent no.2 is categorically stated, the court is entitled to infer against the petitioner. The affidavits too general in nature can not therefore help the petitioner, as the same cannot be said to be the pointer of the authorship of opponent no.2.

8. It is the case of the petitioner that even after

being released on bail, the opponent no.2 used to give threats on phone. He used to vituperate. It is alleged that the opponent no.2 used the phone of Mr. & Mrs. Shastri. When Mrs. Shastri realised that opponent no.2 was misusing her phone and she also could hear ribaldry, she chided him rudely and drove him out. It is pertinent to note that affidavit of Mrs. Shastri is not filed for the reasons best known to the petitioner. It seems the petitioner feels contented by mere allegations and takes no care to prove, the same even prima facie, and expects the court to decide in her favour on the basis of inference and conjectures having no scope in law.

9. For the aforesaid reasons, the petitioner has failed to make out a case for cancellation of bail consistent with the law made clear hereinabove. The petition, therefore, fails and is hereby rejected.

10. As submitted at this stage, it would be open to the petitioner to prefer the application for cancellation of bail in future if permissible in law, and the court shall decide in accordance with law.

Rule discharged.
